


# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference <b>BLATA-007</b>	<b>FOR FURTHER ACTION</b>		See Form PCT/PEA/416
International application No. <b>PCT/BR2004/000167</b>	International filing date (day/month/year) <b>03.09.2004</b>	Priority date (day/month/year) <b>05.09.2003</b>	
International Patent Classification (IPC) or national classification and IPC <b>B65D43/02</b>			
Applicant <b>BRASILATA S.A. EMBALAGENS MET LICAS et al.</b>			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> sent to the applicant and to the International Bureau) a total of 3 sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input checked="" type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>			
Date of submission of the demand  <b>05.04.2005</b>		Date of completion of this report  <b>08.12.2005</b>	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer  <b>Segerer, H</b>  Telephone No. +49 89 2399-8201	



**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

10/570580  
IAP20 Rec'd FCT/PTO 01 MAR 2006  
International application No.  
PCT/BR2004/000167

**Box No. I Basis of the report**

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
  - ☐ publication of the international application (under Rule 12.4)
  - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements\*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

**Description, Pages**

1-11 as originally filed

**Claims, Numbers**

1-13 received on 05.04.2005 with letter of 22.03.2005

**Drawings, Sheets**

1/8-8/8 as originally filed

☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

4. ☒ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages
- ☒ the claims, Nos. 6,7
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

International application No.  
PCT/BR2004/000167

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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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1. Statement

Novelty (N)	Yes: Claims	1-13
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1-13
Industrial applicability (IA)	Yes: Claims	1-13
	No: Claims	

2. Citations and explanations (Rule 70.7):

**see separate sheet**

**INTERNATIONAL PRELIMINARY  
REPORT ON PATENTABILITY  
(SEPARATE SHEET)**APR 20 2006  
International application No.

PCT/BR2004/000167

**Re Item I****Basis of the report**

In addition to a clarification of independent claim 1 (incorporation of the "preamble" of original claim 12 being acceptable under Article 19(2)/Article 34(2)(b) PCT in view of the figures of the application), the applicant has deleted some of the features of original claim 6 (remark: these omitted features are claimed separately in new claim 7); therefore, present claim 6 is considered generalized. (i.e. the deletion of features in claim 6 introduces subject-matter which extends beyond the content of the application as filed, contrary to Article 19(2)/Article 34(2)(b) PCT).

In accordance with Rule 70.2© PCT, this report is established as if said unallowable amendment of claim 6 had not been made (i.e. present claims 6 and 7 are considered "re-unified").

**Re Item V****Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****V.1) Reference is made to the following documents:**

- D1: US-A-3 240 383 (SCHOLTZ ARTHUR P) 15 March 1966 (1966-03-15)
- D2: WO 02/47995 A (ALVARES ANTONIO CARLOS TEIXEIR ; BRASILATA S A EMBALAGENS METAL (BR);) 20 June 2002 (2002-06-20)
- D3: WO 95/03225 A (BRASILATA S A EMBALAGENS METAL ; GUARDA MANOEL JOSE (BR); LABATE PEDRO) 2 February 1995 (1995-02-02)
- D4: US 2003/089715 A1 (SENE ANTONIO ROBERTO ET AL) 15 May 2003 (2003-05-15)

**V.2) Lack of inventive step**

**The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of (clarified) independent claim 1 does not involve an inventive step in the sense of Article 33(3) PCT.**

Reasoning: the document D1 (cf, figures 1,2) discloses a metal can comprising a tubular body (for coffee and, thus, for bulk products as claimed) and an "inner" upper end wall ref. 31 with central opening/lid (being exposed when the "outer", double seamed upper wall ref. 14 is cut off in order to initially open the can); said upper end wall ref. 31 has a conical shape as defined in the characterizing portion of claim 1 such that (upon turning the can of D1 upside down) no barrier impairs the free gravitational flow of the bulk type contents towards the central dispensing opening. Said conical, "bottle-neck"-type end wall ref. 31 of D1 is not double seamed to the body/lateral wall of the can as claimed in clarified claim 1 (and any hint leading the skilled person to adapt the D1-construction thereby arriving at the solution claimed in claim 1 appears to be missing in the available prior art, since D1 already comprises and uses said seam type, however, for the "outer" end wall ref 14); i.e. starting from D1, claim 1 appears to be new and inventive; however, the combination of features claimed in claim 1 appears to be merely a suggested modification of the cans according to D2-D4, since a person skilled in the art

- starting from prior art cans with conventional, double seamed (and inwardly protruding) upper end wall portions according to D2-D4 (comprising the features of the preamble of claim 1; cf. e.g. D2, fig. 3) and
- intending to solve the problem of barriers (being present in the inwardly protruding upper end wall portions according to D2-D4) which impair the free gravitational flow of a bulk type contents contained towards the central dispensing opening

clearly would take a suitably shaped construction of the can end wall into consideration, in particular a standard, conical shape known from bottles and the like (and or the construction of end wall ref. 31 of D1); i.e. the adaptation/slight shape modification of the double seamed upper walls of D2-D4 (provision of outwardly protruding, e.g. conical upper walls, e.g. according to the shape of wall ref. 31 of D1) appears to come within the customary practice followed by persons skilled in the art (slight and obvious/suggested modification of the can according to D2 or D3 or D4, e.g. in view of D1; lack of inventive

step; Article 33(3) PCT).

**The dependent claims 2-13** appear to be comprised in said suggested, slightly modified can constructions (cf. e.g. claim 10 defining gripping handles of the lid as disclosed by D4, figures 1 and 4, ref. 35 or cf. e.g. claim 3 defining an upper wall with "a height which ... continuously increases toward the opening" as suggested by the shape of wall ref. 31 according to D1, fig. 2); i.e. the dependent claims can also not be considered inventive (Article 33(3) PCT).

### **V.3) Further comments**

- At least documents D1, D2 and D4 should have been cited in addition (Rule 5.1(a)(ii) PCT).
- The obvious mistake on page 10 should have been corrected (cf. line 26; ref. sign 17 should have been replaced by ref. sign 27).
- Page 11, last paragraph, term "constructive concept" should have been replaced by "scope of the invention (as defined by the claims)" for reasons of clarity.

AP20 Rec'd FCTW 01 MAR 2006

CLAIMS

1. A can for bulk products, comprising: a tubular body (10) in metallic sheet, having at least one peripheral lateral wall (11) and one annular upper wall (12) presenting an external edge (12a) affixed to the peripheral lateral wall (11), an internal face (12b) turned to the interior of the tubular body (10) and an internal edge (12c) defining an opening (13); said can presenting the external edge (12a) of its annular upper wall (12) double seamed to an upper edge (11a) of the peripheral lateral wall (11) of the tubular body (10) and a lid (20) to be removably fitted and retained in the opening (13) of the can, in order to close it, characterized in that the annular upper wall (12) has any point of its internal face (12b) disposed at a height, measured in the interior of the tubular body (10), at minimum equal to the height of another point of said internal face (12b) disposed in a radially external manner, aligned and adjacent in relation to said point.
2. The can as set forth in claim 1, characterized in that the points of the internal face (12b) of the annular upper wall (12), disposed according to the same circumferential alignment concentric to the axis of the tubular body (10), are contained in a plane orthogonal to said axis.
3. The can as set forth in claim 2, characterized in that, along at least one portion of the radial extension of the annular upper wall (12), the internal face (12b) of the latter presents a height which progressively and continuously increases toward the opening (13).
4. The can as set forth in claim 3, characterized in that the internal face (12b) of the annular upper wall (12) presents the external radial extension portion

(12d), adjacent to the peripheral lateral wall (11) of the tubular body (10), disposed in a plane orthogonal to the axis of the tubular body (10).

5     5. The can as set forth in claim 3, characterized in that the internal face (12b) of the annular upper wall (12) presents an internal radial extension portion (12e) adjacent to the opening (13) disposed in a plane orthogonal to the axis of the tubular body (10).

10     6. The can as set forth in claim 1, characterized in that the internal edge (12c) of the annular upper wall (12) is upwardly and radially outwardly bent, in order to form a circumferential rib (15) with the cross section defined by at least one portion of an arc of a circle with the center in a plane (P) orthogonal to  
15     the axis of the tubular body (10) and medianly sectioned by said plane (P), said lid (20) having a peripheral lateral wall (21) externally provided with a circumferential cradle (22) presenting a cross section in the form of an arc of a circle and within  
20     which is fitted the portion in the form of an arc of a circle the circumferential rib (15).

25     7. The can as set forth in claim 6, characterized in that the peripheral lateral wall (21) of the lid (20) has an upper section incorporating an external peripheral flange (23) which is seated on the circumferential rib (15) upon fitting the latter in the circumferential cradle (22) of the lid (20), which is maintained in the closing condition of the opening (13).

30     8. The can as set forth in claim 7, characterized in that the external peripheral flange (23) is continuous and seated on an adjacent portion of the annular upper wall (12) of the can, when the lid (20) is closed.

35     9. The can as set forth in claim 7, characterized in that the external peripheral flange (23) incorporates



small radial extensions (23a) angularly spaced from each other and which are configured to seat on the annular upper wall (12) of the can, when the lid (20) is closed.

5 10. The can as set forth in claim 9, characterized in that the external peripheral flange (23) incorporates two diametrically opposite radial bridges (27) connecting and articulating, to said external peripheral flange (23), the ends of a pair of opposite  
10 semicircular gripping handles (28), slightly and radially spaced from the peripheral flange (23) and which are medianly incorporated, through breakable radial connections (23b), to the small radial extensions (23a) of the external peripheral flange  
15 (23), said gripping handles (28) being medianly and angularly displaced from an inoperative position, substantially coplanar to the small radial extensions (23a) and incorporated thereto until the first opening of the lid (20), and a raised operative position after  
20 the rupture of the breakable radial connections (23b).

11. The can as set forth in claim 1, characterized in that the lid (20) comprises a basic annular wall (24), from whose external edge is upwardly projected the peripheral lateral wall (21), which is internally  
25 incorporated to an upwardly displaced central tubular drawn portion (25).

12. The can as set forth in claim 1, characterized in that the lid (20) is made of any one of the materials defined by plastic, metal, and compositions thereof.

30 13. The can as set forth in any one of the previous claims, characterized in that the annular lower wall (12) has its height limited by a plane containing the upper edge (11a) of the peripheral lateral wall (11) of the tubular body (10).